

IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF OKLAHOMA

DAVID LEE JOHNSON,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	CIV-05-933-L
	)	
JUDGE PEDDLEFORD, et al.,	)	
	)	
Defendants.	)	

REPORT AND RECOMMENDATION

Plaintiff, a state prisoner appearing *pro se*, has filed a civil rights Complaint and Motion for Leave to Proceed *In Forma Pauperis* in conformance with 28 U.S.C. §1915(a), as amended. After review of Plaintiff's motion on September 6, 2005, the undersigned granted Plaintiff's motion to proceed without full prepayment of the filing fee and directed Plaintiff to pay an initial partial filing fee of \$28.05 by September 26, 2005, in accordance with 28 U.S.C. §1915(b)(1). Plaintiff was advised that he would be required to make monthly payments of 20 percent of the preceding month's income credited to his prison account(s) until the full \$250 filing fee was paid. He was also advised that failure to either (1) pay the initial partial filing fee, or (2) show cause in writing for the failure to pay could result in dismissal of this action without prejudice to refiling. As of this date, Plaintiff has failed to either pay the initial filing fee or show cause in writing for his failure to do so.

Plaintiff's lack of interest in complying with the Court's Order combined with the Court's attempt to manage and control its caseload warrant a dismissal of the action without

prejudice. Brandenburg v. Beaman, 632 F.2d 120, 122 (10th Cir. 1980) (*per curiam*), cert. denied, 450 U.S. 984 (1981).

### RECOMMENDATION

Accordingly, it is recommended that Plaintiff's Complaint be dismissed without prejudice to refiling for failure to pay the initial partial filing fee or to show cause for his failure to do so. Plaintiff is advised of his right to file an objection to this Report and Recommendation with the Clerk of this Court by October 19, 2005, in accordance with 28 U.S.C. §636 and LCvR 72.1. Plaintiff is further advised that failure to make timely objection to this Report and Recommendation waives his right to appellate review of both factual and legal issues contained herein. Moore v. United States of America, 950 F.2d 656 (10th Cir. 1991).

This Report and Recommendation disposes of all issues referred to the undersigned Magistrate Judge in the captioned matter.

ENTERED this 29<sup>th</sup> day of September, 2005.

  
GARY M. PURCELL  
UNITED STATES MAGISTRATE JUDGE